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9 *Jeanette Dillon and Linda Buchanan*

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 JUSTIN L. TRIPP,

13 Plaintiff,

14 vs.

15 CLARK COUNTY, et al.

16 Defendants.

CASE NO.: 2:17-cv-01964-JCM-PAL

**DEFENDANTS' MOTION TO EXTEND
DISCOVERY**

(2nd Request)

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18 Defendants Michael Rose, Jacquelyn Schumaker, Cesar Esparza, Robert Burleson, Neldon
19 Barrowes, Jeanette Dillon and Linda Buchanan ("LVMPD Defendants"), hereby move for an
20 Order extending the expert disclosure deadline only for an additional thirty (30) days. This
21 Motion is based on Federal Rule of Civil Procedure 26, Local Rule 26-4, the pleadings and
22 papers on file herein, the following memorandum of points and authorities and any such oral
23 argument as may be set.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PROCEDURAL HISTORY**

3 Plaintiff Justin Tripp (“Plaintiff”) filed his First Amended Complaint (“FAC”) on January
4 7, 2019. [ECF No. 14]. Plaintiff is representing himself in proper person and is currently
5 incarcerated. Plaintiff alleges that during his arrest Las Vegas Metropolitan Police Department
6 (“LVMPD”) Officers used excessive force against him. Plaintiff also alleges that his rights were
7 violated by various Corrections Officers of Clark County Detention Center (“CCDC”) and that
8 he received inadequate medical care and treatment while he was a pre-trial detainee at CCDC.
9 Defendant Rose was served with the FAC on February 6, 2019. Rose filed an Answer on
10 February 27, 2019. [ECF No. 27]. Defendants Esparza and Schumaker then filed their Answer
11 on April 8, 2019. [ECF No. 50].

12 Plaintiff filed a Motion to Appoint Counsel, [ECF No. 53], which LVMPD Defendants
13 opposed. [ECF No. 56]. Plaintiff filed a Motion to Amend Complaint, [ECF No. 44], which
14 LVMPD Defendants opposed. [ECF No. 47]. The LVMPD Defendants previously filed a
15 Motion to Extend Discovery, [ECF No. 70], which Plaintiff opposed, [ECF no. 73]. Plaintiff
16 filed a Motion to Substitute DOE Defendants which identified Defendants Robert Burleson,
17 Neldon Barrowes, Kevin Kegley, Jeanette Dillon and Linda Buchanan. [ECF No. 75].

18 On December 2, 2019 this Court issued an Order on the multiple Motions above. [ECF
19 No. 110]. The Court granted Plaintiff’s Motion to Appoint Counsel and submitted this case to
20 the Court’s Pro Bono Pilot Program. No Counsel has appeared for Plaintiff as of the date of
21 filing this Motion. The Court denied Plaintiff’s Motion to Amend Complaint but did grant
22 Plaintiff’s Motion to Substitute DOE Defendants and the newly named Defendants were served
23 and filed their Answer on January 13, 2020, [ECF No. 119]. Finally, the Court granted the
24 Motion to Extend with the following deadlines:

1 Close of Discovery: May 30, 2020

2 Amend Pleadings: March 1, 2020

3 Expert Disclosures: March 31, 2020

4 Rebuttal Expert Disclosures: April 30, 2020

5 Dispositive Motions: June 29, 2020

6 Interim Status Report: March 31, 2020

7 Joint Pre-Trial Order: July 29, 2020

8 Recently, Plaintiff filed a Motion to Extend the Deadline to Amend Pleadings. [ECF
9 Nos. 123 and 126]. NaphCare opposed the Motion and the LVMPD Defendants filed a Joinder
10 to the Opposition. [ECF Nos. 124 and 125].

11 **II. AN EXTENSION IS WARRANTED**

12 A brief extension of the current deadline to disclose expert reports is warranted. The five
13 (5) new LVMPD Defendants (previously identified as DOEs) referenced above recently
14 appeared in this matter. All are Corrections Sergeants at Clark County Detention Center
15 (“CCDC”). The LVMPD Defendants’ Corrections Expert requires some additional time to
16 prepare his initial expert report due to the new issues specific to these Defendants and, more
17 importantly, unanticipated delays associated with COVID19. The LVMPD Defendants’
18 Corrections Expert is the Chief of a Fire Department and has been inundated because of the
19 pandemic.

20 In addition, Nevada Governor Steve Sisolak ordered that all non-essential businesses in
21 the State of Nevada be closed for the next thirty (30) days due to the worldwide pandemic and
22 spread of COVID19. While Kaempfer Crowell, Counsel for the LVMPD Defendants continues
23 to operate during this state wide shutdown, most attorneys and support staff are working

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1 remotely and all in-person meetings and depositions have been postponed to comply with the
2 CDC's recommendations for social distancing.

3 LVMPD Defendants recognize that this request is not being made within twenty-one (21)
4 days of the current expert disclosure deadline, March 31, 2020 pursuant to LR 26-4; however
5 LVMPD Defendants submit that good cause and excusable neglect exists.

6 LR 26-4 states in relevant part:

7 A motion or stipulation to extend a deadline set forth in a discovery plan must be
8 received by the court no later than 21 days before the expiration of the subject
9 deadline. A request made within 21 days of the subject deadline must be
10 supported by a showing of good cause. A request made after the expiration of the
11 subject deadline will not be granted unless the movant also demonstrates that the
12 failure to act was the result of excusable neglect.

13 In evaluating excusable neglect, the court considers the following factors: (1) the reason
14 for the delay and whether it was in the reasonable control of the moving party, (2) whether the
15 moving party acted in good faith, (3) the length of the delay and its potential impact on the
16 proceedings, and (4) the danger of prejudice to the nonmoving party. *See Pioneer Inv. Servs. Co.*
17 *v. Brunswick Assocs.*, 507 U.S. 380, 395 S. Ct. 1489, 123 L.Ed.2d 74 (1993).

18 As stated, the five (5) newly named LVMPD Defendants recently appeared in this case.
19 The LVMPD Defendants' Corrections Expert was working diligently to address the issues
20 associated with these new Defendants in his report but has recently advised that additional time
21 is needed to prepare the report. The additional time is necessary due to COVID19 related
22 complications. As the Court is aware, the COVID19 pandemic issues, related shut down of
23 businesses, and required social distancing began only a short time ago. The issues continue to
24 evolve in our community and across the world. In short, the LVMPD Defendants did not know
twenty-one (21) days ago that an extension of the expert disclosure deadline would be necessary.

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1 **A. DISCOVERY.**

2 **1. Discovery Completed To Date.**

3 The LVMPD Defendants, NaphCare and Plaintiff have provided their initial Rule 26
4 Disclosures. The LVMPD Defendants have provided six (6) additional supplemental
5 disclosures.

6 The LVMPD Defendants have responded to two sets of Requests for Production of
7 Documents and Interrogatories from Plaintiff and one set of Requests for Admissions. The
8 LVMPD Defendants served two sets of Requests for Production of Documents and
9 Interrogatories on Plaintiff. Plaintiff has responded to one set of Requests of Production of
10 Documents. However, the remaining discovery responses are outstanding and Plaintiff has not
11 responded even after LVMPD Defendants requested Plaintiff do so. Plaintiff and NaphCare also
12 exchanged and responded to written discovery.

13 Finally, the LVMPD Defendants have served various third-party subpoenas. The
14 responses received have been provided. However, one third-party has not responded despite
15 demands and the LVMPD Defendants anticipate they will need to file a Motion to Compel.

16 **2. Discovery to Be Completed.**

17 The LVMPD Defendants are currently preparing Requests for Admissions to Plaintiff.
18 As stated above, it is likely that the LVMPD Defendants will be filing a Motion to Compel
19 against a third-party for failing to comply with a Subpoena. The LVMPD Defendants and
20 NaphCare will take Plaintiff's deposition.

21 **3. Reasons Why Discovery is Incomplete.**

22 The LVMPD Defendants have been diligent in completing discovery, however, there
23 have been some delays and because of the rapid onset of COVID-19, a brief extension of the
24 current expert disclosure deadline is necessary.

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IT IS ORDERED that ECF No. 128 is
GRANTED under LR 7-2(d).

IT IS SO ORDERED

DATED: April 02, 2020



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of KAEMPFER CROWELL, and that on the date below, I
caused the foregoing **DEFENDANTS' MOTION TO EXTEND DISCOVERY (2nd Request)**
to be served via CM/ECF and/or First Class Mail (where indicated) addressed to the following:

Justin Tripp, #40730-086
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2190 East Mesquite Avenue
Pahrump, Nevada 89060

Plaintiff, Pro Se
(Via U.S., First Class Mail)

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Rachel Rudd

DATED this 24th day of March, 2020.

/s/ Bonnie Jacobs
an employee of Kaempfer Crowell